

IN THE UNITED STATES DISTRICT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

OUTMEMPHIS; JANE DOE 1; JANE DOE2; JANE DOE 3; and JANE DOE 4,

Plaintiffs,

VS. NO. 2:23-cv-2670

BILL LEE, in his official capacity as Governor of Tennessee; JONATHAN SKRMETTI, in his official capacity as the Attorney General and Reporter of Tennessee; DAVID RAUSCH, in his official Capacity as Director of the Tennessee Bureau of Investigation; and FRANK STRADA, In his official capacity as Commissioner Of the Tennessee Department of Correction,

Defendants.

UNITED STATES OF AMERICA

Plaintiff,

VS.

NO. 2:24-cv-2101

THE STATE OF TENNESSEE AND THE
TENNESSEE BUREAU OF INVESTIGATION,

Defendants.

STATUS CONFERENCE (TEAMS)

BEFORE THE HONORABLE SHERYL H. LIPMAN

Wednesday

3rd of April, 2024

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Wednesday

April 3, 2024

3 The Proceedings in this case began on this date,
4 Wednesday, 3rd day of April, 2024, at 9:30 a.m., when and
5 where evidence was introduced and proceedings were had as
6 follows:

So this is the status conference of Out Memphis versus Bill Lee, et al., 23-2670, and the status/scheduling conference in USA v State of Tennessee and TBI, which is 24-2101.

All right. For Out Memphis -- why don't we just -- who is here for Out Memphis?

MS. MEEROPOL: Good morning, Your Honor. Rachel Meeropol for Plaintiffs and Out Memphis. I'm joined by my colleagues at ACLU National, ACLU of Tennessee and the Transgender Law Center.

THE COURT: All right. If you would introduce everyone so we have exactly who is here for those entities.

MS. MEEROPOL: Yes. We have Alexis Agathocleous and Jon Davidson joining me from ACLU National, Jeff Prepitit from ACLU of Tennessee, and Milo Inglehart from the

1 Transgender Law Center.

2 **THE COURT:** I'm checking people off. The last
3 person, Sheila -- what did you say, Sheila --

4 **MS. MEEROPOL:** Milo. Milo with an M.

5 **THE COURT:** Milo Inglehart?

6 **MS. MEEROPOL:** Yes.

7 Milo, please correct me if I'm mispronouncing
8 your last name.

9 **THE COURT:** They say no.

10 And then for the State, for the Governor, let's
11 see who we've got.

12 **MR. BRANDON:** Good morning, Your Honor. This is
13 Cody Brandon from the Tennessee Attorney General's Office.

14 **THE COURT:** Okay.

15 **MR. BRANDON:** I'm here this morning on behalf of
16 Defendants in both cases, if it saves Your Honor any
17 repetition.

18 **THE COURT:** Right.

19 **MR. BRANDON:** I also have David Rudolph from our
20 Memphis office and John Ross Glover from our Nashville office
21 on the call with us.

22 **THE COURT:** All right. Let me get rid of my
23 e-mail so that we don't have those things popping up.

24 All right. And then for the United States.

25 **MS. BERGER:** Good morning, Your Honor. I'm

1 Stephanie Berger on behalf of Plaintiff, United States, and
2 I'm joined by my colleague, Ali Szemanski.

3 **THE COURT:** Okay. Great.

4 Has everyone been introduced?

5 All right, awesome.

6 So the first issue I'll address is the motion to
7 stay. So this morning, we got from Defendants in the Out
8 Memphis case, obviously defendants in both, but I think it
9 was filed in the Out Memphis case, the motion to file a reply
10 brief. They indicate, I believe, that the Plaintiffs, at
11 least in the Out Memphis case, don't oppose the filing of the
12 reply brief.

13 Do the Plaintiffs in the United States case
14 oppose the filing of the reply brief?

15 **MS. BERGER:** No, Your Honor. We haven't seen a
16 request to file a reply brief, but we would not oppose that.

17 **THE COURT:** Okay. Mr. Brandon.

18 **MR. BRANDON:** Yes, Your Honor. Having received
19 the United States's response just late yesterday afternoon, I
20 haven't had time to consult with Ms. Berger. I appreciate
21 the preemptive agreement on leave to file a reply. We do
22 intend to file a motion for leave and attach the reply in the
23 US case, as well. It will cover substantially similar
24 material, but there obviously are some small points of
25 difference that need to be addressed with the US case.

1 **THE COURT:** All right. Let me -- so in the Out
2 Memphis case, the motion, which is ECF 79, I'm going to
3 grant, and Defendants need to file the motion -- or the --
4 excuse me, the reply as a separate docket entry within three
5 days of today. So today is Wednesday, certainly by Monday.
6 I hope you can file it by the end of this week.

7 **MR. BRANDON:** Of course, Your Honor.

8 **THE COURT:** In the other case, the United States
9 case, I am granting your oral motion to file the reply brief,
10 so that saves you a step. So get that on the docket within
11 three days of today, as well. Okay?

12 **MR. BRANDON:** Understood, Your Honor.

13 **THE COURT:** All right. Anything else on the
14 reply brief part of that?

15 I'll say for the record what I -- before I saw
16 that this morning, what I intended to say this morning about
17 the motion to stay is, at this point, I don't see any reason
18 to not go forward with the scheduling conference. That's not
19 a ruling on the motion to stay, but I don't see any reason --
20 as I -- I'll just leave it at that. I don't see any reason
21 to not go forward with the motion to stay -- I mean, excuse
22 me, with the scheduling conference.

23 All right. The other issue is the motion to
24 consolidate, which is why we asked the Out Memphis people to
25 join us this morning. There was some indication, I guess, in

1 the Out Memphis side of -- in the Out Memphis case that -- I
2 guess opposition because you wanted to sort of make sure
3 that -- well, the way I viewed it is you wanted to know sort
4 of the details of what consolidation meant before agreeing to
5 it.

6 Would that be a fair statement?

7 **MS. MEEROPOL:** That's fair, Your Honor. And I'm
8 happy to sort of share our concerns now, if that would be
9 helpful.

10 **THE COURT:** Yes, it would be. Thank you.

11 **MS. MERROPOL:** Okay. So in general, you know, if
12 the Court thinks consolidation would be efficient, we don't
13 oppose it. We do think some of those efficiencies could be
14 obtained, whether or not the cases are consolidated. So for
15 example, we seem to be going forward on a similar schedule.
16 We can coordinate status conferences. Depositions should
17 be -- identical witnesses be identified. It feels as though
18 all of those efficiencies can happen whether or not the cases
19 are consolidated. So it's not entirely clear to us what
20 efficiency would come with consolidation.

21 And then we have three concerns with respect to
22 how consolidation might operate. First we noticed a footnote
23 in the Rule 26(f) report in the United States's case,
24 indicating that if the Court were to order consolidation, the
25 schedule might change. We don't understand why consolidation

1 would result in any change in the schedule, especially since
2 it appears as though those schedules are coordinated so far.
3 And we don't want any delay in the case.

4 Second, we've agreed to a relatively streamlined
5 discovery plan, for example, on the eight depositions. So we
6 would be concerned that consolidation not operate to limit
7 the number of depositions that we are entitled to and other
8 discovery mechanisms.

9 Third, our case involves quite a few
10 constitutional claims that the United States isn't bringing.
11 So we think it wouldn't make sense to have any joint briefing
12 on dispositive motions, that that would present, you know,
13 logistical difficulties without any benefit.

14 Those are the three concerns we have with respect
15 to consolidation.

16 **THE COURT:** Okay. Mr. Brandon.

17 **MR. BRANDON:** Yes, Your Honor. And I guess I'll
18 lead by saying I understand Ms. Meeropol's concerns and don't
19 intend to make those concerns a reality, I guess. The main
20 benefit of consolidation in the Defendant's opinion for both
21 cases is for case management purposes.

22 The footnote in the scheduling order, I think,
23 was intended to refer to the fact that in a consolidated
24 case, it would be appropriate to adjust details of the
25 scheduling order, just to make sure that both cases lined up.

1 For instance, there's differences in the deadline to complete
2 written discovery in both cases, and I think it would make
3 sense to sync up those calendars, not in a way that I think
4 would do prejudice to any party, but just to keep everything
5 on the same track.

6 As Ms. Meeropol alluded to, there's agreements
7 about the number of depositions to be taken in the private
8 case. I don't think that those would be imposed on the US or
9 altered, but I think it would be good if a scheduling order
10 addressed how depositions would be managed in both cases.

11 So any changes to the scheduling order, the
12 Defendants anticipate obviously setting aside the motion to
13 stay. We're really just acknowledging that for case
14 management purposes, there may be small details that have to
15 be worked out with the logistics of having two cases on the
16 docket. But we do think there's a number of benefits in, for
17 example, lining up the deadlines for written discovery or
18 fact witness discovery that Defendants can arrange for
19 depositions of witnesses with both Plaintiffs' counsel,
20 whether those occur at the same time with all counsel in the
21 room or occur with separate counsel in the room, but are
22 arranged with dates that aren't conflicting with each other.

23 If we have differing deadlines or -- you know,
24 hopefully we don't have any motions to move deadlines in the
25 scheduling order in the future, but if they moved in one case

1 and we ended up having a fact witness deposition deadline two
2 months ahead in one case of what we have in the other, it
3 just seems like a recipe for a bit of confusion and chaos,
4 and ultimately prejudice to the Defendants in terms of
5 duplicating efforts in both cases without having them managed
6 on the same docket.

7 I think as we noted in the motion to consolidate,
8 we think it's probably premature to address things like joint
9 trial and, you know, joint briefing. I don't think it would
10 be necessary for dispositive motions unless the parties agree
11 that that be a more efficient -- the primary purpose of
12 consolidation would be for case management purposes.

13 **THE COURT:** I think Ms. Meeropol's point that
14 everything could be coordinated without consolidation, you
15 know, is an interesting way to put it, but the other -- the
16 other side of that is, you know, why not consolidate it to
17 just make it clear on the record that things are being done,
18 you know, for example, a deposition is being taken, you know,
19 in both cases.

20 I think consolidation makes sense, and I think we
21 can work around Ms. Meeropol's concerns, which are real
22 concerns. So I'm going to grant the motion to consolidate
23 the cases. And I'll add on top of it, it's really helpful
24 for us, for the Court, to make it clear that, you know, if I
25 have a hearing in one, it's a hearing in both because they're

1 consolidated cases. It really makes it a lot easier to
2 manage things.

3 Let's talk about, though, the things that -- the
4 issues that Ms. Meeropol raised. Mr. Brandon is right. I
5 think he -- you made it sound like there may be other dates
6 that are different than just the one. I saw only the one
7 date that is different in the two schedules, and that is the
8 document production and interrogatory date for the DOJ action
9 is proposed to be October 28th. And it's July 12th in the
10 Outright Memphis case.

11 I guess, Ms. Meeropol, do you -- is there any
12 issue with just -- with having written discovery, October 28
13 as the deadline in the Outright Memphis case?

14 And let me say on the front end, Outright Memphis
15 got a schedule that you, frankly, would not have gotten if --
16 if I were doing the scheduling conference. I really
17 appreciate Judge Claxton stepping in for me. It really
18 helped with a number of things going on at that point in
19 time. But man, y'all got a dream schedule.

20 I don't know why -- tell me, before we get into
21 the details of some of this stuff, why do you all need this
22 much time for expert discovery? And gosh, why do you need --
23 I think it's six months between -- maybe it's not six months.
24 I don't know.

25 Why do you need that much time for expert

1 discovery? Because it seems to me, as I understand the case,
2 you could start expert discovery now, because you know what
3 your expert discovery is all about.

4 **MS. MEEROPOL:** Well, Your Honor, the period for
5 expert discovery is based on our sense that there's going to
6 be a significant number of experts necessary for the registry
7 claims, specifically, not for other claims. And so, we just
8 wanted to make sure that we had adequate time to engage in
9 all of that work and then analyze all of that work prior to
10 any potential motions for summary judgment.

11 I would have to take a look at the schedule now,
12 especially with the new deadline potentially applicable for
13 written discovery, which I don't see as a problem, to
14 determine if there's any way to shave, you know, a month or
15 so off it, which we're certainly open to try. I would be
16 happy to take a look at that and see if we could shave
17 deadlines there if you like.

18 **THE COURT:** No. I mean, I thought about it, but
19 I don't -- because you all got this schedule, I guess, was
20 this -- I don't remember when you all had the hearing. But
21 because you've got the schedule, I'm not going to say we
22 should change it at this point.

23 But I will say, there is no way anyone's getting
24 an extension of time in this case. There's no reason for it.
25 You've got plenty of time to get done what you need to get

1 done. But no, I appreciate the offer to look at the
2 schedule, but I'm not asking you to change it at this point.
3 I just was curious because, again, seems like you know what
4 you're going to look to your experts to do right now. So you
5 really have more -- from the time you got this schedule, you
6 have more than a year to even disclose experts, which is
7 obviously, in my mind, an inordinate amount of time. But
8 I'll leave it where it is.

9 So October 20 -- as I said, October 28 is the
10 only difference I saw in the two schedules. So any issue
11 with that, Ms. Meeropol?

12 **MS. MEEROPOL:** No. That's fine, Your Honor.

13 **THE COURT:** Okay. And so, I don't see anything
14 else that would change with the schedule.

15 In terms of the streamline deposition plan in the
16 Out Memphis, what I heard Mr. Brandon say, and tell me if
17 this is right, is that -- and maybe I need to hear from the
18 United States on this issue, but what I heard is you all
19 won't disturb that. Is that right?

20 **MR. BRANDON:** I think that's right, Your Honor.
21 I believe maybe in our 26(f) report, we addressed, you know,
22 the number of depositions and interrogatories. I think
23 that's -- in our perspective, that's fine to keep the same
24 for the Out Memphis and proceed with that. And we'll just
25 really work on schedule coordination in terms of the cases

1 being consolidated.

2 **THE COURT:** And what is the United States's
3 position on that issue?

4 **MS. BERGER:** Your Honor, the United States has no
5 problem with coordinating to the greatest extent possible for
6 depositions and discovery and all those things.

7 **THE COURT:** Okay. I'm not sure I heard that you
8 all agree to the same plan as Outright Memphis.

9 **MS. BERGER:** I believe we had ten depositions in
10 our scheduling order and they have eight. So I think that
11 would be the only difference.

12 They might actually have more requests for
13 production than us, as well. I think they might have 30
14 interrogatories and we have 25. So to the extent that you're
15 wanting to line all of those up to be exactly the same, there
16 are a few differences there.

17 **THE COURT:** Well, I guess let's talk about that.
18 Is there any -- just because the cases are consolidated, I'm
19 not sure there's a reason that something couldn't happen in
20 one case that the parties in the other case don't feel like
21 they need to do. I'm trying to think that through.

22 Ms. Meeropol, what do you think, since this is
23 your issue?

24 **MS. MEEROPOL:** We have no concerns with our
25 schedule, our number of interrogatories and depositions as it

1 is or the United States having something slightly different.
2 It doesn't present any concerns to us.

3 **THE COURT:** All right. So that issue is taken
4 care of.

5 In terms of the joint briefing on dispositive
6 motions, I think we don't -- you know, we don't make a final
7 decision on that at this point. I'll tell you that to the
8 extent that the issues being briefed are the same in both
9 cases, it sure would help if that briefing is at least
10 coordinated, but I recognize there could be different issues.

11 Let's just talk about that as we get closer or
12 you all talk about that and see if you can work it out. And
13 if you -- if there are questions about it, we can deal with
14 it at the time.

15 This doesn't -- to me, this doesn't tell us
16 anything about where we might be going with trial. I'm
17 not -- we're not making any other decisions about this --
18 coordination of a trial at this point. The concept of the
19 consolidation for me is, it helps us to keep the cases
20 together. For you all, the way I see it is it just makes it
21 clear that the discovery you're taking can be -- should be
22 coordinated so that it applies in both cases.

23 Any questions about what consolidation means at
24 this point?

25 **MS. MEEROPOL:** No, Your Honor. Thank you.

1 **MS. BERGER:** None from us, Your Honor.

2 **THE COURT:** Okay. And Mr. Brandon?

3 **MR. BRANDON:** All clear. Thank you, Your Honor.

4 **THE COURT:** All right. And so, for the record,
5 this means we're -- I'm granting ECF 76 in the Out Memphis
6 case, and -- I think I had -- too many documents.

7 **MS. MEEROPOL:** Your Honor, I believe ECF 76 may
8 be the motion for the stay. I apologize if that's incorrect.

9 **THE COURT:** It's -- I'm looking at it. It's the
10 motion to consolidate in Out Memphis.

11 **MS. MEEROPOL:** Okay. Apologies.

12 **THE COURT:** No worries.

13 But I can't find the ECF number for the motion to
14 consolidate in the United States' case. Does someone have
15 that handy?

16 **MS. BERGER:** Your Honor, I believe it's 15.

17 **THE COURT:** Okay.

18 **MR. BRANDON:** I think that's correct.

19 **THE COURT:** All right. So ECF 15 in the United
20 States of America versus State of Tennessee then is granted.

21 Let me ask a couple questions about the case
22 substantively. So as I understand the challenge -- the
23 challenges here, I saw three primary challenges; one to the
24 registration requirement for the aggravated prostitution
25 charge, one to the fact that it makes the charge go from a

1 misdemeanor to a felony, and then finally that someone who's
2 charged with aggravated prostitution is ineligible for
3 judicial diversion.

4 Are those the three primary arguments? Am I
5 missing something?

6 **MS. MEEROPOL:** Well, I can begin, Your Honor. I
7 think it's the entire enforcement of the aggravated
8 prostitution charge as a whole here in terms of
9 discriminating on the basis of disability, because of
10 disability functioning as an element in that charge. And
11 then separately, yes, the fact that it then qualifies an
12 individual for registration.

13 **THE COURT:** Ms. Berger.

14 **MS. BERGER:** I think that's right, Your Honor. I
15 agree with Ms. Meeropol's representation.

16 **THE COURT:** Okay. And I guess my description
17 maybe skipped a step. So the idea is that because the
18 aggravated prostitution in the Plaintiff's eyes includes an
19 element of disability, because of the HIV status, then the
20 impact of being charged with that -- there are three ways in
21 which the impact of being charged with that has on the person
22 in your eyes. It's -- and it's the three things that I
23 mentioned; is that correct?

24 **MS. MEEROPOL:** Those three things, certainly.
25 There's a stigma attached to disability discrimination, as

1 well, that I think is important to acknowledge and impacts
2 our clients considerably.

3 **THE COURT:** Okay.

4 **MS. MEEROPOL:** And then I think Your Honor's
5 description also took into account the qualification for sex
6 offender registration, of course, which is a separate claim
7 but also operates significantly in terms of what aggravated
8 prostitution means.

9 **THE COURT:** Right. That was the registration
10 requirements.

11 And some of this goes to the issue of the stay.
12 So to the extent that the new legislation changes the
13 registration requirement -- and again, I'll, you know, hear
14 from the Defendants in the reply brief or anything else you
15 want to add. I guess you attached the reply brief, but
16 frankly, I didn't have a chance to read it.

17 But the point on the stay is -- from the
18 Plaintiff's perspective, I guess, is the new legislation goes
19 to the registration requirements but not the statute as a
20 whole; is that correct?

21 **MS. MEEROPOL:** Somewhat, Your Honor. So it's
22 true that the new legislation means that individuals who are
23 convicted of aggravated prostitution after July 1st, 2024
24 will not need to register. However, it doesn't have an
25 immediate impact on individuals like our clients who are

1 already registered.

2 And I think this is actually -- this sort of
3 misunderstanding between the parties is crystalized in
4 Defendants' proffered reply brief. So I'd love to take a
5 minute to sort of lay out where I think the disconnect is, if
6 that might be helpful to Your Honor.

7 **THE COURT:** Sure.

8 **MS. MEEROPOL:** Thanks.

9 So, you know, the Defendants are pointing to
10 Sections 2 and 3 of SB 181, which are the provisions that
11 remove the requirement for individuals convicted of
12 aggravated prostitution to register as sexual offenders or
13 violent sexual offenders, and seem to be implying in the
14 reply that that means something for individuals who are
15 already on the registry as of the current date.

16 However, we know from Section 5 of SB 181 exactly
17 how those individuals, which include our clients, will be
18 impacted, because Section 5 of the new law directs the
19 individuals already on the registry for aggravated
20 prostitution before 2024 may request termination through TBI.
21 And then that provision of the code then goes on to clarify
22 what a termination request will look like, and it's not
23 automatic.

24 It requires a background check -- first of all,
25 it requires an individual seeking termination affirmatively.

1 Secondly, it requires a background check by TBI, a TBI
2 finding of substantial compliance or no substantial
3 noncompliance, it's not clear which. There's a five-year ban
4 if an individual is found not to be qualified for
5 termination. And there's no sort of published guidelines as
6 to how TBI determines whether there is substantial compliance
7 or not.

8 And we've seen how this process operates because
9 a similar process is now available to individuals who were on
10 the registry for criminal exposure to HIV. And we see that
11 it does not result in individuals immediately coming off the
12 registry.

13 Fundamentally, this means that Tennessee is
14 retaining the authority to impose the registry restrictions
15 against our clients and others who are on the registry solely
16 for aggravated prostitution.

17 Now, if TBI disagrees that they retain that
18 statutory authority, I believe that SB 181 means that
19 individuals who are solely on the registry as a result of
20 aggravated prostitution have the right to immediate removal
21 from the registry, we are thrilled to hear that and we would
22 like to hear that on the record and we think in that case,
23 you know, it would really make sense for us to get together
24 and see if we can settle our registry claims. But that is
25 not the way we currently read this new law.

THE COURT: Mr. Brandon.

MR. BRANDON: Yes, Your Honor. Two related points, I guess. I think Ms. Meeropol is right that there's maybe some different perspectives as to the operation of Public Chapter 545 between the Plaintiffs and the Defendant.

Ultimately as set out in the Defendant's reply, I think a clear reading of the statute as amended is that aggravated prostitution is removed from the definition of sexual offense and violent sexual offense. So the parts of the registration act that are triggered specifically as to sexual offenders and violent sexual offenders, like, for example, the reporting requirements in Section 40-39-203 and the geographic restrictions in 40-39-211 that specifically read no sexual offender or no offender, which are all defined terms for the statute, no longer apply to someone because of an aggravated prostitution conviction.

So there is a very immediate effect that, in our opinion, Public Chapter 545 has on this litigation, on Plaintiffs and on others that are convicted of aggravated prostitution in that they are -- those Sections 211, 203 and others like it that apply to offenders no longer apply to people who have been convicted of aggravated prostitution, because they are not offenders.

I think Ms. Meeropol's position is a
misunderstanding, and this goes back not to -- I don't mean

1 to, you know, broach issues that aren't really at discussion
2 today, but it's an issue that's highlighted in the
3 Defendant's motion to dismiss of a misunderstanding about the
4 responsibilities of the TBI versus local registering agencies
5 and local prosecutors in enforcement of the registration act.

6 Ms. Meeropol, I think, just mentioned that, you
7 know, Tennessee retains the authority to enforce the
8 registration act, but really that -- that's a misnomer.
9 Local registering agencies perform some of the functions
10 under the act. Local prosecutors perform some of the
11 functions under the act. The TBI's role is really reserved
12 to publishing the website and maintaining the registry
13 database.

14 And again, not to revisit that, but I think there
15 is an immediate impact in that aggravated prostitution is no
16 longer defined as a sexual offense and violent sexual
17 offense, meaning people convicted of aggravated prostitution,
18 setting aside if they've been convicted of another qualifying
19 offense, are no longer sexual offenders or violent sexual
20 offenders. And that the provisions of the act that are
21 triggered specifically by a person being an offender aren't
22 triggered by an aggravated prostitution conviction anymore.

23 **THE COURT:** Well, based on that statement, it
24 does sound like it would at least be useful for you all to
25 have a conversation about whether there is some way to talk

1 through the registration requirement part of the case.

2 It's not exactly the statement Ms. Meeropol said
3 that if the state says this, then we should work out
4 requirement -- the registration requirement part of the case,
5 but it's close. So it seems like a conversation about that
6 aspect of the case would be useful.

7 It does seem to me that there are other -- that
8 that's not the whole case, that there are other aspects of
9 the case, which is what I was trying to get to at the very
10 beginning. But, you know, please don't let the pendency of
11 the motion to stay get in the way of any useful conversation
12 you all can have about a part of the case you may be able to
13 agree to.

14 Ms. Berger, I didn't turn to you. Did you have
15 anything to add here?

16 **MS. BERGER:** Yes, Your Honor. I just wanted to
17 reiterate there definitely does seem to be some disagreement
18 regarding the effect that the law will have on how the
19 registry will take effect moving forward or be changed moving
20 forward, especially since, as Mr. Brandon represented, there
21 may be some role for local enforcement involved in this. But
22 the law itself does still say that an individual needs to
23 apply to the Tennessee Bureau of Investigation in order to
24 terminate their registry requirements, and it's not -- that
25 process as outlined in law does not seem to be automatic. So

1 to the extent that we can have discussions to determine
2 whether it is or is not automatic, I think -- I agree that
3 that would be helpful.

4 I think one additional piece that I wanted to
5 point out that is unique to the United States' case is that
6 the registry requirements remain important to us even if they
7 are somewhat changed by this law, because we have uniquely a
8 compensatory damages relief piece in our complaint. And so,
9 even if the registry requirements are changed by this law,
10 they are still highly relevant to the damages that
11 individuals have experienced as a result of previously being
12 on the registry.

13 **THE COURT:** Okay. I guess what -- Mr. Brandon,
14 what I heard you say, and maybe I have this wrong, but that
15 the -- putting aside what -- who is the right entity and
16 whether it's local or -- I'm going to set that issue aside
17 for a minute. But what I was -- what I heard you say is that
18 the -- all of the enforcement -- all of the requirements that
19 come with being on the registry would no longer be able to be
20 enforced against people convicted just of aggravated
21 prostitution because that would no longer be an offender.

22 So while I guess technically the pre July 1, 2024
23 people would be on the registry, they wouldn't have to do
24 anything because of the change in the definition of
25 "offender". Is that what you're saying?

1 **MR. BRANDON:** I think that's right, Your Honor,
2 in terms of -- I think Public Chapter 545, the amendment is
3 very clear that things like the geographic restrictions
4 where -- you know, on residents and employment within a
5 thousand feet of a school or the quarterly or yearly
6 reporting obligations that apply specifically to people who
7 are defined as offender, sexual offender, violent sexual
8 offender have no application to someone that is not a sexual
9 offender or violent sexual offender. And people convicted of
10 aggravated prostitution alone, with no other qualifying
11 convictions, are no longer those offenders.

12 **THE COURT:** Well, if that covers all of the
13 things someone is supposed to do because they're on the
14 registry, I hope you will think about whether that is also
15 saying those folks should automatically come off the
16 registry, but I'm going to --

17 **MR. BRANDON:** Understood, Your Honor.

18 **THE COURT:** -- leave it to you all to talk about
19 that.

20 The other, I guess, substantive issue I want to
21 talk about is just the big picture here. It strikes me that
22 these are all legal issues. What issues would there be for a
23 trial?

24 **MS. MEEROPOL:** I don't want to make any promises
25 right now, Your Honor, at this stage of the case, but we do

1 expect that this case would be appropriate for summary
2 disposition.

3 **THE COURT:** Okay. Anyone -- and I'm not going to
4 take you off the trial calendar or anything like that. I'm
5 just curious. This is just me trying to sort of
6 conceptualize the case. Any different opinion?

7 **MS. BERGER:** Your Honor, the United States also
8 thinks that this would be a good case for summary judgment
9 disposition. I think one piece where there could potentially
10 be a difference, since we do have the damages claim, if there
11 needed to be some sort of trial or finding of fact related to
12 the amount of damages, that could potentially be a bifurcated
13 issue or something that we would address in a different way
14 at a later stage.

15 **THE COURT:** Okay. Mr. Brandon?

16 **MR. BRANDON:** Yes, Your Honor. I think being
17 realistic, this case seems like it's headed for summary
18 judgment. I certainly don't want to foreclose the potential
19 that there could be fact issues. You know, the first thing
20 that comes to mind is disagreements between experts, that
21 that may have to be resolved by a factfinder in terms of if
22 there's differing expert opinions about some of the medical
23 material here or I heard Ms. Meeropol say earlier maybe
24 experts about the impact of the registry. And so, there may
25 be differences that have to be resolved by a factfinder

1 there.

2 All that said, you know, Defendants are also of
3 the position that there's a number of legal questions that
4 can be resolved at the motion to dismiss stage, and certainly
5 that might be followed up with the summary judgment stage
6 that are unrelated to the merits. And so, I think it's very
7 realistic to think that this case will be finished at summary
8 judgment.

9 **THE COURT:** Okay. And I didn't mean to step over
10 your motion to dismiss.

11 All right. Those are all the sort of substantive
12 questions I have about it since I wasn't -- since I didn't do
13 the scheduling conference in the Outright Memphis case. So
14 I'm ready to talk about the schedule a bit.

15 And I guess the initial -- just because of the
16 timing, there are other bits of the elements of the -- I'll
17 call it the DOJ action that -- where the dates are different,
18 because you're just getting started. So looking at the dates
19 for the DOJ action schedule, you all had April 26 as initial
20 disclosure date, which makes, frankly, no sense to me since
21 you've already done disclosures in the other case.

22 So why would it -- you know, by rule, it's no
23 more than two weeks from the date of this conference. So why
24 on earth would you need actually longer when I suspect you
25 already know what your initial disclosures are?

1 And for this, I'm talking just to the people in
2 the DOJ case.

3 **MS. BERGER:** Sure. Your Honor, we were trying to
4 sort of track ourselves onto the same kind of timeline that
5 was going on in the Out Memphis litigation, as well. But
6 your point is taken, and if we need to shorten the initial
7 disclosures a bit, I think, you know, that's something that
8 we're willing to do. You know, we understand that.

9 But disclosures, we haven't made our initial
10 disclosures yet, and obviously we can take a look. We also
11 don't have -- you know, we haven't seen the -- so we haven't
12 seen Defendants, but of course, you know, we would see
13 theirs, as well.

14 **THE COURT:** Right.

15 I guess, Mr. Brandon, you're -- you shouldn't
16 have an issue at all since you've already done them once.

17 **MR. BRANDON:** Yeah. I think that'd be fine for
18 us, Your Honor. There may be slight differences given the
19 differences in Defendants that are sued, but we're prepared
20 to make initial disclosures at an earlier date.

21 **THE COURT:** All right. Let's make that April 17,
22 which is two weeks from the date of today.

23 Then motions to join parties and amend pleadings,
24 you all suggested July 2nd, which is longer than what we have
25 in our sample schedule to kind of work off of. Why wouldn't

1 it be June 3rd, which is more in line with what we think --
2 what we estimate in a typical case?

3 Again, I don't know -- I don't know who else
4 would be joining this case. It seems like we've got
5 everyone. And in terms of amended pleadings, you know,
6 you -- that may be something, I don't know, but June 3rd
7 seems to be plenty of time for that.

8 Ms. Berger, your thoughts?

9 **MS. BERGER:** Yes, Your Honor, especially since
10 we're moving the deadline for initial disclosures back a bit.
11 So if there are any additional parties or anything we learn
12 about in those that would bear a fact, we think we can agree
13 to June 3rd. That makes sense.

14 **THE COURT:** Okay. So that's join parties and
15 amend pleadings, and then --

16 **MR. BRANDON:** Your Honor, sorry. If I could --

17 **THE COURT:** Yeah.

18 **MR. BRANDON:** -- just raise, I do think at least
19 from Defendant's perspective, having a date after July 1st
20 made some sense in offering the parties a chance to reassess
21 what parties need to be defendants to this lawsuit or
22 plaintiffs to the lawsuit and if complaints needed to be
23 amended or other pleading -- if there's answers by then, I
24 don't know if there will be, but if there's other pleadings
25 that need to be amended after the new law takes effect, that

1 later deadline would accommodate that reality.

2 Of course, if that's necessary, we could address
3 moving the deadline. It was just an attempt to make that
4 realistic possibility.

5 **THE COURT:** Right.

6 What I hate to do is set a deadline based on
7 something that might happen in the future. If it does happen
8 in the future, then to me that's a change in circumstance and
9 you can always do those same things by motion.

10 **MR. BRANDON:** Certainly, Your Honor. That's
11 understood.

12 **THE COURT:** Okay. All right.

13 And then motion to dismiss, Plaintiff had
14 April 10th; is that right? I guess --

15 **MS. BERGER:** Yes, Your Honor.

16 **THE COURT:** Okay, because that was the deadline
17 to answer, I guess. Defendants have July 19.

18 Again, I'm inclined to follow what our typical
19 pattern is, which would make it July 8th. If there's --
20 again, I guess I'm expecting to hear from you, Mr. Brandon,
21 that you're looking -- I think you even said you were looking
22 at July 19th because of the -- when the statute goes into
23 effect.

24 And this is one of -- one of the reactions I had
25 to that argument in general is, you at least know what the

1 words of the statute are now. And so, you know, to wait
2 19 days or whatever after it goes into effect doesn't really
3 make sense to me because you're not going to know any more
4 about enforcement, I'm guessing, in those 19 days -- if
5 that's sort of what you're looking for, you're not going to
6 know any more than you do today, I think, because I -- I'm
7 not sure anything is going to happen between July 1 and
8 July 19th.

9 Maybe -- God knows I've been wrong before, and I
10 certainly could be wrong about that. But again, I don't see
11 any reason to do something different than what we would
12 normally do because of the possibility of something that
13 might come up. If it comes up, tell me about it and we'll
14 talk it through.

15 And what am I missing, Mr. Brandon?

16 **MR. BRANDON:** Probably not anything, Your Honor.
17 I think this is a case of perhaps us overthinking things a
18 little bit and trying to account for those possibilities, and
19 understanding, of course, that we can address a change in
20 circumstances if that comes up. Then we can plan to do that.

21 **THE COURT:** You know, my statement before about
22 I'm not changing any of these deadlines, don't ask for any
23 extensions, I would say doesn't apply to this -- these
24 initial dates because of -- you know, you're right, there
25 could be something, I just don't see it, tied to the actual

1 implementing the statute or that immediate period. But, you
2 know, tell me if I'm wrong about that.

3 My comment really was about this discovery period
4 and the time for experts. That, it seems like you all have
5 plenty of time.

6 The rest of your dates, again, other than that
7 October 28th date, I believe, are the same. Is that right,
8 Ms. Berger or Mr. Brandon?

9 **MS. BERGER:** I think that's right, Your Honor.

10 **MR. BRANDON:** I believe that's right.

11 **THE COURT:** And then, yeah, this ADR, I'll tell
12 you I typically plug in the date that our ADR plan calls for,
13 which is 12 weeks from the date of this conference. I guess
14 I get why there was a punting on that issue. Does anyone
15 wish to be heard on that? Anyone think we should do
16 something different at this point on the ADR deadline?

17 **MS. BERGER:** The United States just wants to
18 represent that we're always open to discussing settlement.
19 So to the extent that the State's position changes at all, we
20 are willing to add in that component.

21 **MR. BRANDON:** Your Honor, I guess just to be --
22 we've -- I think we've openly talked with both the US and the
23 ACLU in terms of what the effects of the amendment are. We
24 do intend to be open if there is any possibility of
25 settlement or, you know, alternative dispute resolution going

1 forward, we certainly want to save the parties and the
2 Court's time. But given the nature of the suit, that it's a
3 challenge to statute at its core, there's, in our view,
4 usually very limited opportunities for, you know, settling a
5 statute, if that's the -- if the effort is a repeal of a
6 statute, there's not much work that we can do on that end.

7 So realistically, in cases like this, we often
8 find that mediation or other alternative dispute resolutions
9 can not be as effective, but we're certainly happy to go
10 through those and explore possibilities and keep the lines
11 open with our opposing counsel to the extent that we can make
12 progress in those areas.

13 **THE COURT:** I'm curious, and I'm -- I ask this --
14 don't take this as a question within the context of this
15 case, but it just -- I'm curious.

16 If the Attorney General's Office determined that
17 any statute was unconstitutional, you all issue opinions all
18 the time, if you determined a statute was unconstitutional,
19 which theoretically you could end up at that position
20 following a mediation, you -- you've got to tell the
21 legislature that. Why wouldn't -- again, in a theoretical
22 case, why wouldn't that be something that could come out of a
23 mediation?

24 **MR. BRANDON:** It's certainly possible, Your
25 Honor. I guess I would just say unlikely in that we do try

1 to do as much of our diligence on the front end before
2 wasting the parties' and the Court's times, even in initial,
3 you know, litigation. If our opinion is that the statute is
4 unconstitutional, then that's sort of -- that's an assessment
5 that we're capable of making earlier in the process that
6 isn't often changed by the development of facts on the
7 ground, but certainly possible that it could be, and I want
8 to acknowledge that chance.

9 **THE COURT:** Well, I mean, that's, in essence, the
10 same thing as I heard from someone in a scheduling conference
11 yesterday. We believe we win, so we shouldn't have to go to
12 mediation or we -- you know, whatever shouldn't happen in the
13 case.

14 I mean, I'd like to think that most people going
15 into litigation believe that they're right, which is
16 essentially what you're saying. So how is that statement
17 different than any party believing they're right going into
18 the litigation?

19 **MR. BRANDON:** I think, Your Honor -- and I don't
20 want to be evasive in answering the question, but I also
21 don't want to be too specific in terms of internal processes
22 or decisionmaking or that sort of thing. But I think given
23 the special, you know, duty of the attorney general to defend
24 state statutes, that there's perhaps a different obligation
25 than private parties in terms of what compromises that

1 they're able or willing to make despite their belief in
2 ultimate success.

3 I know that's a very general answer, but I'm
4 afraid I can't say much more than that, Your Honor.

5 **THE COURT:** That's fine. That's fine. I just --
6 as I was thinking about it, I was curious about your
7 position. I'm not sure I'm convinced, but I hear you, and
8 that's fine. I'll leave the ADR statement as we have it --
9 as you all proposed and as is in the Outright Memphis
10 schedule.

11 Let me come back to one issue that, at least in
12 my mind, is not completely settled. So we do have some
13 initial dates that are different in the United States case
14 from the Outright Memphis case, which really says the
15 document production and interrogatory deadline could be
16 different in the two schedules.

17 Is there any -- so in the Outright Memphis case,
18 do we need to change the document production and
19 interrogatory deadline? I don't know, maybe we do because
20 you're now going to do written discovery sort of coordinated.
21 So maybe we do need to change that deadline.

22 **MS. MEEROPOL:** I think that probably makes the
23 most sense, Your Honor, although we're fine with either way.

24 **THE COURT:** All right. As I talk it through, I
25 realize we do need to change that. So we will -- we'll do a

1 very short order in the Outright Memphis case that just
2 acknowledges that the document production and interrogatory
3 deadline is now October 28. That will -- and then we'll pick
4 up the rest of the dates as you all proposed -- you all in
5 the United States' case, as you all proposed it in your
6 proposed scheduling order, other than the initial ones that
7 I've changed a little bit, but the rest we'll pick up as
8 proposed.

9 Then you all have on eDiscovery that you don't
10 have an agreement, but you'll comply with the local rule.
11 I'm assuming there really isn't much eDiscovery. You have no
12 consent to trial by magistrate. You've got an agreement on
13 the return of inadvertently produced privileged information.
14 And you all have the trial dates and so forth already in
15 here, which are the same as the Outright Memphis case.

16 Anything I've missed or anything you all think we
17 need to -- anything else you all think we need to discuss?

18 Let me start with Ms. Berger. Anything else?

19 **MS. BERGER:** Your Honor, I just had a technical
20 question about, if the cases are consolidated, does that
21 change at all how we file things? Do we still have the
22 separate dockets so we would file things on our own docket?

23 **THE COURT:** No. It would help if you file things
24 with both docket numbers on it, so both case captions, both
25 docket numbers. And then when you go in to file it, I

1 confess, I don't know how to do that, but I think you -- you
2 end up filing it in both cases at the same time. I think
3 there's some way to do that. Someone correct me if I'm wrong
4 on that. Okay.

5 **MR. BRANDON:** I believe -- now, I'll admit that I
6 defer to some other folks in my office on filing, but I
7 believe there's an option to spread entries across two cases,
8 and that's probably the way to handle it. Don't hold me to
9 it.

10 **THE COURT:** That sounds right to me, too.

11 **MS. BERGER:** We can all figure it out together.

12 **THE COURT:** Okay. Ms. Meeropol, anything else
13 from you?

14 **MS. MEEROPOL:** No, Your Honor. Thank you.

15 **THE COURT:** All right. And Mr. Brandon, anything
16 else from you?

17 **MR. BRANDON:** No, Your Honor.

18 **THE COURT:** And I didn't intentionally leave out
19 everyone else. It's just those people kept talking. Anyone
20 else have anything you want to add here?

21 All right. We will get the scheduling order
22 entered in the DOJ case, I'm sure today. We'll get that one
23 change in the Out Memphis schedule also done today, and we
24 will -- someone will figure out whatever needs to be done to
25 actually consolidate the cases today, as well, I think.

1 All right. Thank you all very much. I
2 appreciate your time, and have a lovely rest of your day.

3 (Adjournment.)

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C E R T I F I C A T E

I, CANDACE S. COVEY, do hereby certify that the foregoing 40 pages are, to the best of my knowledge, skill and abilities, a true and accurate transcript from my stenotype notes of the Teams Status Conference on the 3rd day of April, 2024, in the matter of:

Out Memphis, et al.

vs.

Bill Lee, et al.

And

USA

Vs.

TBI

Dated this 19th day of April, 2024.

S/Candace S. Covey

CANDACE S. COVEY, LCR, RDR, CRR
Official Court Reporter
United States District Court
Western District of Tennessee